

In the Matter of Merchant Mariner's Document No. Z-650427 and all
other Licenses, Certificates and Documents
Issued to: SOCRATES MCKINLEY BAZEMORE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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SOCRATES MCKINLEY BAZEMORE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 27 May 1954, an Examiner of the United States Coast Guard at Seattle, Washington, revoked Merchant Mariner's Document No. Z-650427 issued to Socrates McKinley Bazemore upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as a messman on board the American SS RIDER VICTORY under authority of the document above described, on or about 22 May 1953, while said vessel was at anchor in the port of Yokohama, Japan, he wrongfully struck with his hand a member of the crew named Joseph F. Gilmartin (First Specification); he wrongfully inflicted bodily harm on Gilmartin with a knife (Second Specification); and he wrongfully inflicted bodily harm on Gilmartin by biting him (Third Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection. Counsel for Appellant made a motion to dismiss the Second and Third Specifications on the ground that Appellant's conviction by a General Court-Martial, for assault upon Joseph F. Gilmartin by striking him on the body on 22 May 1953, is res judicata as to the Second and Third Specifications as well as to the First Specification with respect to which the General Court-Martial conviction is binding upon Appellant. The Examiner denied the motion on the grounds that 46 C.F.R. 137.15-5(a) does not apply to a General Court-Martial conviction as it does to a Federal Court conviction and that said regulation applies to Federal Court convictions but not to acquittals. Appellant then entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Engineer, the testimony of the First Assistant Engineer, and

several documentary exhibits including the record of the General Court-Martial proceedings against Appellant in connection with this incident.

After counsel's motion to dismiss was denied by the Examiner, counsel made his opening statement and Appellant testified under oath in his defense. It was then stipulated that the Chief Steward and a fireman on the ship would testify to certain things if they were subpoenaed to appear as witnesses.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-650427 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the decision is contrary to 46 C.F.R. 137.15-5(a) for the reasons set forth in counsel's motion to dismiss the Second and Third Specifications. It is also contended that the evidence is insufficient to prove the First, Second or Third Specifications.

APPEARANCES: Messrs. Walthew, Oseran and Warner of Seattle, Washington, by James E. McIver, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 22 May 1953, Appellant was serving as a messman on board the American SS RIDER VICTORY and acting under authority of his Merchant Mariner's Document No. Z-650427 while the ship was an anchor in the port of Yokohama, Japan.

Prior to 2400 on 22 May 1953, Appellant returned to the ship in company with two other unlicensed members of the crew, Joseph F. Gilmartin and William R. Murray. While in the launch, Gilmartin attempted to stop an argument between Appellant and Murray. After the three seamen boarded the ship, the argument was continued on the main deck and Gilmartin again became involved in it. Several blows were struck and Appellant sunk his teeth into Gilmartin's left lower jaw and severely bit him. The two men were separated by other members of the crew including the First Assistant Engineer.

After the latter officer grabbed Appellant's hair and pulled his head away from Gilmartin's jaw, the First Assistant Engineer ordered Appellant to remain in his room. The First Assistant then proceeded to report the incident to the Master of the ship.

The Chief Engineer arrived on the scene and observed Gilmartin's wound which was bleeding slightly. With the assistance of two other officers, the Chief Engineer took Gilmartin to the boat deck and proceeded aft with the intention of taking him to the quarters of the Third Assistant Engineer. The other three men were in front of the Chief Engineer and almost opposite their destination when Appellant ran past the Chief Engineer and engaged in a scuffle with Gilmartin and the two officers with him. Appellant used a knife held in his right hand to inflict a six-inch cut on the left side of Gilmartin's neck. The First Assistant Engineer returned in time to see the knife in Appellant's hand. Immediately after being cut with the knife, Gilmartin was shoved into the Third Assistant Engineer's quarters for protection; the gash on his neck bled profusely. Appellant refused to obey the Chief Engineer's order to surrender the knife. When the Chief Steward ordered Appellant to go below to his room, Appellant obeyed the order.

Gilmartin was hospitalized ashore to receive medical treatment for his wounds. Appellant was taken ashore by the United States military authorities and held in custody for a period of approximately three and a half months. He was then tried by General Court-Martial and convicted on his plea of guilty to a specification alleging that he committed an "assault upon Joseph F. Gilmartin by striking him on the body" on 22 May 1953. Appellant was sentenced to pay a fine of ten dollars.

Appellant's prior record consists of an admonition in 1951 for assault with a dangerous weapon; and a probationary suspension in 1952 for seriously abusing the authority of the Master and using obscene language towards him.

OPINION

The fully reasoned decision of the Examiner sets forth in detail the evidence upon which he based his conclusions and why he specifically rejected much of Appellant's testimony in favor of the testimony given by the two disinterested witnesses - the Chief Engineer and the First Assistant Engineer. In view of the blanket nature of the contention on appeal that the evidence is not sufficient to prove the specifications, it suffices to state that I concur in the conclusion of the Examiner that the following constitutes substantial evidence to support the above Findings of Fact and the specifications:

First Specification. The testimony of the First Assistant Engineer; Appellant's plea of guilty to the General Court-Martial specification; and admissions of Appellant in his testimony at the hearing.

Second Specification. The testimony that Appellant rushed past the Chief Engineer towards Gilmartin; the latter received a gash on his neck; a considerable amount of blood was in the Third Assistant Engineer's quarters but little or no blood was on the main deck or boat deck; and Appellant had possession of a knife immediately after Gilmartin was cut on the neck. Although neither of the witnesses saw Appellant inflict the wound, the only logical conclusion to be drawn from the circumstantial evidence is that he did it.

Third Specification. The testimony of the Chief Engineer and the First Assistant Engineer; and admissions by Appellant in his testimony.

In connection with the First Specification, Appellant is inconsistent in contending that the evidence is insufficient to support the specification and, at the same time, claiming that the General Court-Martial conviction is res judicata as to this specification.

Appellant also contends that the Examiner's decision is contrary to 46 C.F.R. 137.15-5(a) which states that the "judgment of conviction by a Federal court is res judicata of the issues decided by that judgment" and "where acts forming the basis of the charges in a Federal court are the same as those involved in proceedings under Title 46 U. S. Code section 239, the said judgment of conviction is conclusive in the latter proceedings." In counsel's motion to dismiss the Second and Third Specifications, counsel urged that the General Court-Martial conviction was equivalent to a conviction by a Federal court; the issues resolved by the General Court-Martial were res judicata as to the three specifications herein; and since Appellant was not found guilty by the General Court-Martial of knifing or biting, the Second and Third Specifications should be dismissed.

I agree with the Examiner's denial of the motion on the grounds that 46 C.F.R. 137.15-5(a) does not apply to a General Court-Martial conviction and that the regulation, by its very wording, is limited in application to convictions as distinguished from acquittals. Denial of the motion on the latter ground is sound because proof in these remedial administrative proceedings may be based upon substantial evidence rather than upon proof beyond a reasonable doubt. Therefore, action may be taken in these proceedings although the greater degree of proof required in penal

actions is not present.

The primary reason why the above regulation does not apply to this case is because courts-martial are not considered to be "Federal courts" within the meaning of the regulation. Courts-martial are "Federal courts" in the sense that they are provided for by Congressional legislation; but they are military tribunals set up under the constitutional power of Congress to make rules for the government and regulation of the Armed Forces of the United States. United States Constitution, Article I, Section 8, Clause 14. Therefore, courts-martial are entirely separate and independent from the Federal courts which are vested with the judicial power of the United States and established as the Federal judicial system under Article III, Section 1, of the Constitution. Kurtz v. Moffitt (1885), 115 U.S. 487, 500; McDonald v. Lee (C.A. 5, 1955), 217 F.2d 619, 622. Since the words "Federal court" are ordinarily used only to apply to courts within the judicial system of the United States, courts-martial are not considered to be within the meaning of the regulation because courts-martial are not generally accepted as "Federal courts" and they are not equivalent to them.

CONCLUSION

The order of revocation is not considered to be excessive. Appellant committed two separate assaults upon Gilmartin (one of which was with a deadly weapon after Appellant had been ordered to remain in his room); Appellant's prior record indicates a disposition to disrupt the order and discipline on ships; the facts indicate that Appellant has a vicious temperament; and there are no mitigating factors to take into consideration. It is my opinion that Appellant should not be permitted to serve on merchant vessels of the United States.

ORDER

The order of the Examiner dated 27 May 1954 at Seattle, Washington, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 20th day of April, 1955.